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IN THE

Supreme Court of the United States

October Term, 1959.

No. 223.

PENNSYLVANIA TURNPIKE COMMISSION,
Petitioner,

v.

EDGAR A. McGINNES, District Director of Internal Revenue, Philadelphia

and

MANU-MINE RESEARCH & DEVELOPMENT COMPANY,
Respondent,

and

SEABOARD SURETY COMPANY,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

BRIEF FOR RESPONDENTS IN OPPOSITION.

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EDGAR A. McGINNES, DISTRICT DIRECTOR OF INTERNAL REVENUE, PHILADELPHIA

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MANU-MINE RESEARCH & DEVELOPMENT COMPANY,
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SEABOARD SURETY COMPANY,
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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF FOR RESPONDENTS IN OPPOSITION.

QUESTION PRESENTED.

Does a United States District Court have jurisdiction of an action by a third party (a) to enjoin a District Director of Internal Revenue from paying a tax refund to a taxpayer pending trial of the third party's claim that, under the doctrine of constructive trust, it would be entitled to the proceeds of the refund when received by the taxpayer; and (b) to direct the District Director to pay the refund to the third party upon a determination that such refund is "due and owing" to the third party from the taxpayer.

STATEMENT OF THE CASE.

Petitioner, Pennsylvania Turnpike Commission, brought this action against Edgar A. McGinnes, District Director of Internal Revenue in Philadelphia ("District Director"), Manu-Mine Research & Development Company ("Manu-Mine"), and Seaboard Surety Company ("Seaboard").

The complaint alleges that in 1956, Manu-Mine paid more than a million dollars in federal income taxes for the taxable year ended October 31, 1955; that the amount so paid was entirely derived from funds obtained by Manu-Mine from petitioner by means of a conspiracy to defraud; that the "funds so paid were and are properly the property of the [petitioner] and do not belong and have not rightfully belonged to Manu-Mine"; that petitioner's claim that the said funds were obtained from it by fraud is presently the subject of a suit in equity in a Pennsylvania State court; that Manu-Mine or its assignee Seaboard have applied to the office of the District Director for an income tax refund claimed to be due to Manu-Mine "the claim amounting to about $900,000"; that the District Director "is about to allow such claim for refund and to direct its payment to [respondent] Manu-Mine and/or [respondent] Seaboard"; that petitioner notified the District Director of its "claim to the fund" but that he has refused to withhold payment pending determination of petitioner's claim.

The complaint prays, *inter alia:* (1) that the District Director "or his successors" be enjoined from making the refund payment; and (2) that the District Director be directed to pay the refund to petitioner "upon a determination that the said funds are justly due and owing" to petitioner from Manu-Mine.

Manu-Mine moved to dismiss the complaint for lack of jurisdiction and failure to state a claim upon which relief could be granted. Seaboard moved to dismiss on the latter ground. The District Director filed an answer denying, among other things, that he is about to allow the claim for refund or to direct its payment to Manu-Mine and/or Sea-

board. The District Court held that it had jurisdiction under 28 U. S. C. § 2463 and further held that the complaint stated a claim upon which relief could be granted. An interlocutory appeal was permitted pursuant to 28 U. S. C. § 1292(b), as amended by the Act of September 2, 1958, 72 Stat. 1770. In an opinion filed June 8, 1959, the Court of Appeals reversed with a direction to dismiss the complaint for want of federal jurisdiction.

ABSENCE OF REASON FOR GRANTING THE WRIT.

This case does not present any important question of federal law requiring settlement by this Court. The only issue posed is whether the complaint states a claim within federal jurisdiction. The legal principles determinative of this question are familiar and long-established as shown by the opinion of the Court of Appeals. We respectively submit that these established principles have been correctly applied in the instant case.

Involved is a dispute between private litigants based not on an existing fact but rather on a hoped-for contingency, namely, that the United States will make a tax refund to Manu-Mine. No aspect of Manu-Mine's right to such tax refund is involved in this case. The petitioner merely contends that if Manu-Mine should be found entitled to a tax refund, then, in that event, the District Director should be enjoined from making such refund while petitioner seeks to establish in a private litigation with Manu-Mine its contention that Manu-Mine committed fraud against petitioner and that therefore the tax refund would constitute the *res* of a constructive trust for the benefit of the petitioner. The petitioner further contends that if it should ultimately succeed in its claim against Manu-Mine, the District Director should be directed to pay over the tax refund to it.

As the Court of Appeals held, the complaint asks the federal court to do two things, namely (1) to find by applying Pennsylvania law that Manu-Mine wronged the petitioner and (2) to authorize the garnishment of a debt al-

leged to be owed to Manu-Mine by the United States. The first is entirely a matter of state law and the second is plainly an attempted attachment of a debt owed by the sovereign without authorization by any federal law. See *Buchanan v. Alexander*, 4 How. 20 (1846); *Applegate v. Applegate*, 39 F. Supp. 887 (E. D. Va. 1941).

We respectfully submit it is indisputable that, as the Court of Appeals held: "* * * this is not a claim arising under any law of the United States".

Finally, it is submitted that there are two additional grounds, which the Court of Appeals found it unnecessary to consider, requiring dismissal for lack of jurisdiction. These are:

1. The District Court lacks jurisdiction to enjoin the District Director from performing an act within the scope of his official authority. *Larson v. Domestic & Foreign Commerce Corp.*, 337 U. S. 682 (1949); and

2. The United States is an indispensable party for two reasons: (a) The suit "* * * is essentially one designed to reach money which the government owns." *Mine Safety Appliances Co. v. Forrestal*, 326 U. S. 371, 375 (1945); and (b) Delay in making the tax refund, if due, may increase the Government's liability by requiring it to pay interest at the rate of 6% per annum. Int. Rev. Code, § 6611.

CONCLUSION.

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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